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U.S. HOUSE OF REPRESENTATIVES

SUMMARY OF

H.R. 4170

THE TAX REFORM ACT OF 1983

AS ORDERED REPORTED BY THE

COMMITTEE ON WAYS AND MEANS

OCTOBER 21, 1983

Prepared for the use of the Committee on Ways and Means by its staff

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I. INTRODUCTION

This document provides a summary of the principal provisions of H.R. 4170, the Tax Reform Act of 1983, as ordered reported by the Committee on Ways and Means on October 20, 1983. The bill consists of 11 titles which were previously ordered reported by the Committee as individual bills or separate provisions on July 26-27, October 4-6, and 18-19, 1983. These are the titles of H.R. 4170:

Title I—The Tax-Exempt Entity Leasing Tax Act of 1983 (H.R. 3110, as amended);

Title II—The Life Insurance Tax Act of 1983 (H.R. 4065 as amended);

Title III—The Private Foundation Tax Treatment Revision Act of 1983 (report and recommendations of the Subcommittee on Oversight, with amendments);

Title IV—The Tax Law Simplification and Improvement Act of 1983 (H.R. 3475, as amended, including H.R. 3592 and H.R. 3593, as amended);

Title V—The Permanent Tax Treatment of Fringe Benefits Act of 1983 (H.R. 3525, as amended);

Title VI—The Technical Corrections Act of 1983 (H.R. 3805, as amended);

Title VII—The Tax-Exempt Bond Limitation Act of 1983 (including H.R. 2504, as amended);

Title VIII—Miscellaneous Revenue Provisions (H.R. 699, H.R. 2476, H.R. 2831, H.R. 3096, and H.R. 3173, as amended);

Title IX—The Social Security Disability Benefits Reform Act of 1983 (H.R. 3755, as amended);

Title X—The Medicare Budget Reconciliation Amendments of 1983

Title XI—Amendments to Trade Adjustments Assistance Programs.

This document is prepared for the use of Members of Congress and is intended to serve only as a convenient condensation of the bill's principal provisions. The Committee report will provide the official legislative history. The report will be filed on Friday, October 21, 1983, and should be available on Monday, October 24, 1983.

II. EXPLANATION OF COMMITTEE PROVISIONS

A. Tax Treatment of Property Used by Tax-Exempt Entities

(The Tax-Exempt Entity Leasing Tax Act of 1983) (Title I of the bill)

The Federal income tax benefits of ownership of property include accelerated cost recovery (ACRS) deductions and investment tax credits. Essentially, the law is that the economic substance of a transaction, not its form, determines who is entitled to the tax benefits associated with ownership. Thus, in a lease or similar arrangement, the person claiming ownership for Federal income tax purposes must show that he has sufficient economic indicia of ownership.

The tax benefits of ownership are generally allowed only for property used for a business or income-producing purpose. They are not available for property that is owned by governmental units and tax-exempt organizations. Property that is used (though not owned) by a tax-exempt organization or a domestic governmental unit qualifies for ACRS deductions but generally does not qualify for investment credits. For example, property used under a lease by one of those entities is ineligible for the investment credit. A statutory exception to this investment credit limitation is that qualified rehabilitation expenditures for a building leased to a tax-exempt organization or a governmental unit can qualify for the rehabilitation tax credit. Also, one court has held, and the Internal Revenue Service has ruled, that investment credits can be claimed where a governmental unit essentially contracts not for the use of property itself, but rather for a service to be provided by the owner of the property.

Definition of Tax-Exempt Entities

In general, the bill reduces the tax benefits available for certain property that is leased to or otherwise used by tax-exempt entities. Under the bill, tax-exempt entities include the United States, any State or local governmental unit, possessions of the United States, and most agencies and instrumentalities of any of the foregoing. The term also includes organizations (other than cooperatives described in section 521) exempt from U.S. income tax and certain organizations formerly exempt. The term also includes certain foreign persons, foreign governments, and international organizations.

Reduced Depreciation Deductions for Tax-Exempt Use Property

The bill requires that ACRS deductions for property used by tax-exempt entities be computed using the straight-line method over a recovery period equal to the greater of the present class life of the property under the asset depreciation range (ADR) system (40

years in the case of 15-year real property) or, in the case of property subject to a lease, 100 percent (125 percent in the case of 15-year real property) of the term of the lease. In the case of 15-year real property, this provision applies to the extent of use of the type specified in the bill by tax-exempt entities, but only if more than 20 percent of the property is so used. These rules do not apply to property leased for a short term. Special rules are provided for certain high technology property.

Service Contracts

The bill also provides criteria for determining whether a transaction that is structured as a service contract or other arrangement (including a partnership) should be treated as a lease for purposes of the depreciation and investment credit provisions.

Rehabilitation Tax Credit Denied for Certain Tax-Exempt Use Property

The rehabilitation credit will be denied for real property that is subject to the slower depreciation rules provided by the bill, but only if the rehabilitation expenditures are, or acquisition of the building to be rehabilitated is, financed in whole or in part with the proceeds of obligations That pay the interest that is exempt from Federal income tax under section 103(a).

Effective Date and Transition Rules

The bill generally applies to property placed in service by the taxpayer after May 23, 1983, and to property used under an agreement entered into after that date. However, three transitional rules are provided.

First, the bill would not apply to property used pursuant to a written binding contract which, on May 23, 1983, and thereafter required (1) the taxpayer to acquire, construct, reconstruct or rehabilitate the property, and (2) the tax-exempt entity to use it. This transitional rule would apply to property placed in service by the taxpayer after May 23, 1983, if the taxpayer acquired the property subject to a lease to a tax-exempt entity that was binding on May 23, 1983.

In addition, the bill would not apply to facilities exempted from the limitations contained in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) on ACRS depreciation with respect to facilities financed by industrial development bonds, if a ruling request with respect to such facilities was filed with the IRS by May 23, 1983. Similarly, the bill would not apply to mass commuting vehicles exempted from the safe-harbor lease restrictions of TEFRA.

Second, a transitional rule would apply to cases in which the taxpayer (or a predecessor) or the tax-exempt entity was required to acquire, construct, reconstruct, or rehabilitate the property (not theretofore used by the tax-exempt entity) pursuant to a contract that was binding on May 23, 1983, or completed acquisition, construction, reconstruction, or rehabilitation by that date and after December 31, 1982, in either case so long as the tax-exempt entity enters into a binding contract to use the property by the end of 1983 or had, in writing, indicated by May 23, 1983, a firm plan to enter into a written contract for its use.

Finally, a transitional rule would also apply to property for which official governmental action approving the project or its design was taken and significant sums expended by May 23, 1983, as long as the tax-exempt entity enters into a binding contract to use the property by the end of 1983.

B. Tax Treatment of Life Insurance Companies and Their Products

(The Life Insurance Tax Act of 1983) (Title II of the bill)

Company Taxation

In lieu of the present law three-phase pattern of taxation which applies to life insurance companies, the bill provides a new single-phase tax structure. This structure embodies the tax rules applicable to corporations generally except that certain special rules apply to address issues unique to the life insurance industry. The principal special rules include (1) a deduction for additions to life reserves based on the greater of any cash value provided under a life insurance contract or a reserve for the contract computed under rules provided in the Internal Revenue Code, (2) a limitation on the deductibility of policyholder dividends and other amounts paid or credited to policyholders by a mutual company which insures that the company is taxed at the company level on a minimum return on its equity, (3) a deduction for small life insurance companies, and (4) a generally applicable deduction which reduces the aggregate tax burden on the life insurance industry.

Computation of the deduction for reserves

The bill provides that deductions be computed on the basis of uniform rules regardless of specific assumptions allowable under State law. Under the bill, deductions for additions to reserves would reflect the company's liabilities to policyholders. The bill clarifies the application of the reserve rules to certain stipulated premium and mutual assessment companies regulated under Texas State law. In computing minimum reserves for annuity contracts, it would be recognized that the future benefit of any annuity contract would be the amount necessary to fund the obligation to annuitize the contract.

Mutual company deductions/ownership differential

The bill measures the mutual company equivalent to a stock company's pre-tax corporate earnings by adding an amount to a mutual company's taxable income (after deduction for policyholder dividends). This add-on income is determined by applying a differential rate to the company's tax-measured equity base. The rate is derived by subtracting from an imputed stock company earnings rate (indexed to a stock company numerical moving average for post-1984 years) a mutual company postdividend rate of return, computed using consistent equity bases.

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Segment balance

The rate of return imputed for mutual companies for 1984 would be 16.5 percent, resulting in a mutual company share of total industry tax burden of 55 percent. For subsequent years, the rate used for adjusting this initial rate would be a numerical average of the 50 largest stock companies. For subsequent years, this rate would be adjusted to reflect changes in the numerical average of the returns on equity of the 50 largest stock life insurance companies.

The bill provides for a Treasury study to monitor the operation of the adjusted ownership differential in its first 3 years. The purpose of this study will be to identify annual taxes paid by stock and mutual life companies, analyze various other industry indicia and data, and, in particular, the impact of taxes paid by shareholders of stock life companies on dividend distributions.

Stock subsidiaries of mutual companies

Stock life insurance subsidiaries of mutual life insurance companies are treated as stock companies for tax purposes under the bill. Equity of stock subsidiaries would be included in the mutual parent for purposes of the ownership differential. Intercorporate dividends received from any 80-percent owned stock subsidiary would neither be included in the proration formula, nor counted in determining the parent's rate of return. Also, in computing the mutual company earnings rate for deriving the differential rate, stock subsidiaries of mutuals would be treated as mutuals.

Special rule for small companies

The bill contains a special deduction rule for small companies. Companies with assets (computed on the basis of an affiliated group including both insurance and noninsurance members) of less than $500 million are permitted a deduction equal to 60 percent of its first $3 million in taxable income. This deduction phases out as taxable income increases from $3 to $15 million.

Taxable income adjustment

Under the bill, all companies are allowed a special deduction (TIA) equal to 25 percent of otherwise taxable income. This deduction is computed on the basis of an affiliated group using an 80-percent test and does not apply to income related to noninsurance activities.

Consolidation

Under the bill, in computing the amount of the special deductions (small company, TIA), the taxable income base would be computed without regard to noninsurance items. With respect to consolidated returns, the bill contains a rule whereby consistent treatment would be provided by applying the general rule on a combined basis only to the life insurance members of the group (thus, nonlife insurance gains or losses would not increase or decrease the amount of the special deductions).

Tax-exempt income

In determining the company and policyholder shares of items of tax-exempt income, the bill maintains current law treatment except that the policyholders' share includes all amounts credited or paid to policyholders. Generally, 100 percent deductible dividends received from subsidiaries would no longer be subject to proration.

Reinsurance

In transactions between life insurance companies and other insurance companies, present law denies the interest deductions on indebtedness incurred in connection with reinsurance agreements and recognizes reimbursed policyholder dividends as paid by the ceding company and not by the reinsured. The bill maintains this treatment and broadens the application of the Treasury's authority to allocate and recharacterize items arising out of related party reinsurance.

The bill contains special rules designed to prevent certain reinsurance transactions from trading on the provision in the bill that forgives reserve revaluation income due to the change in reserving rules effective in 1984. Reinsurance transactions occurring after September 28, 1983, would be subject to these new limitations.

Foreign contiguous country branches

Certain conforming, clarification and technical changes in rules relating to the allocation of deductions, equity and deemed surplus for purposes of taxing foreign life companies, certain U.S. branch companies and determining the foreign tax credit limitations were approved by the committee.

Definition of life insurance companies

The bill provides that for purposes of determining whether a company qualifies as a life company, funds held with respect to contracts that do not involve permanent purchase rate guarantees are not to be treated as insurance reserves. An insurance company is defined under the bill as any company for which more than half the business during the taxable year involves the issuing of insurance or annuity contracts, or the reinsuring of risks underwritten by insurance companies.

Effective date

Generally, the effective date for provisions dealing with the taxation of life insurance companies is January 1, 1984. Income that would otherwise result from recomputation of reserves beginning in 1984 is forgiven under the bill (including section 818(c) recomputations and statutory-to-tax recomputations). Similarly, the change from present law in the bill with respect to accrual accounting for policyholder dividends will not give rise to reserve recomputation income.

The amount of deferred gain from operations held in the policyholder surplus account of the company (phase III) would be frozen at its 1983 yearend level and distributions from such account would

be taxed when distributed under the present law rules which are retained.

Taxation of Life Insurance Products

Definition of life insurance product

The bill provides as permanent law a strengthened definition of life insurance. The definition is similar to the temporary rules contained in present law section 101(f). For contracts that fail to meet the definition at any time, the pure insurance portion of the contract (the difference between the face amount and the cash surrender value) will be treated as term life insurance. The cash surrender value will be treated as a deposit fund, and income earned on the fund would be taxable currently.

The bill permits pre-1985 contracts to qualify if they meet either present law or the new definition by substituting 3 percent for 4 percent in the cash value test. In addition, existing plans of insurance that have at least a 20-pay requirement will be grandfathered if they meet the definition by substituting 3 percent for 4 percent in the cash value test.

Annuities

The bill would repeal the 10-year holding period exception from the 5-percent premature distribution penalty. Thus, under the provisions of the bill, the 5-percent penalty would apply with respect to distributions from an annuity (other than a periodic payment from an annuity of at least 5 years) prior to the taxable year in which the contractor attains age 59½. In addition, if the owner of a deferred annuity dies prior to annuitization, the income in the annuity will be included in the decedent's last income tax return. No change was made in the present law rule that excludes from the penalty provisions annuitizations for life or at least 5 years. The changes with respect to annuities would be effective beginning 6 months after exactment.

Policyholder loans

Under the bill, the interest deduction for loans from insurance policies owned by corporations would be limited to interest incurred on loans not greater than $500,000 times the number of lives covered. For nonbusiness interest deductions, the interest limitation shall be applicable to loans of $500,000 on a joint return ($250,000 for single taxpayers). The bill approved by the committee contains indefinite carryover rules for unused deduction limitations. The limitations will be converted to a specified maximum interest deduction utilizing the tax deficiency interest rate. The effective date of the new rules is September 27, 1983.

Group term life insurance

The bill extends the rules of section 79 of the Internal Revenue Code to former employees and tightens the anti-discrimination rules applicable to qualified group-term life insurance plans. The amendment applies to taxable years beginning after 1983. In the case of a group-term life plan in existence on September 27, 1983, these amendments would not apply but only with respect to an in-

dividual covered by the plan on that date and in an amount not in excess of the actual insurance coverage of such individual on such date.

Studies

The bill requires certain studies, including a Treasury Department study of aggregate revenues derived from recent taxable years under the 1959 act provisions, the stopgap provisions of TEFRA, and the reasons for any difference between such anticipated aggregate revenues and actual receipts. The Treasury is also directed to report on the operation of Subchapter L in taxable years 1984, 1985, and 1986, focusing on segment tax burdens. This committee specifically directed the Treasury to analyze the extent to which taxes, paid by shareholders of stock companies on their corporate interest, should be included in determining an appropriate segment balance. The bill calls for interim midyear reports in 1986, 1987, and 1988, with the final report to the Committee on Ways and Means and the Committee on Finance of the Senate on January 1, 1989.

The bill also includes a directive to the Treasury to review the disincentives, if any, in attracting investment capital that may be experienced by growth life insurance companies as a result of the changes in the tax law affecting life insurance companies affected by this legislation.

The bill provides the Secretary of the Treasury with authority to require reporting of data with respect to life insurance companies and their products as may be necessary and in such format to carry out the studies so directed.

Nondeductible IRA Contributions

Under the bill, nondeductible contributions could be made to an IRA, within limits. With some exceptions, these contributions are similar to contributions to tax-deferred annuities as modified by other provisions of this bill. Although no deduction would be allowed for the contributions, the earnings attributable to nondeductible contributions would not be taxed until distributed. Nondeductible contributions would be subject to an annual limit of $1,750.

Contributions in excess of the limits on deductible and nondeductible contributions would be subject to the usual excise tax on nondeductible contributions to an IRA.

Under the bill, if an individual makes a withdrawal from an IRA, which contains both nondeductible and deductible contributions, the withdrawal would be treated first as coming from the earnings on nondeductible contributions and then as coming from the nondeductible contributions. The earnings on the nondeductible contributions would be taxable when distributed and, if the withdrawal occurs prior to age 59½, would be subject to the additional 10-percent income tax applicable to premature distributions from IRA's. Withdrawals that exceed the sum of nondeductible contributions and the earnings thereon would be subject to the usual rules for distributions from IRA's.

The custodian of an IRA would be required to maintain separate accounting for nondeductible contributions and the earnings on the nondeductible contributions. The custodian would not, however, be

required to maintain separate IRA accounts for deductible and nondeductible contributions. The bill requires custodians of IRA's to maintain such records as may be necessary to separately account for designated deductible and nondeductible contributions. The provision applies for taxable years beginning after December 31, 1983.

C. Revision of Private Foundation Provisions

(The Private Foundation Tax Treatment Revision Act of 1983) (Title III of the bill)

Charitable Deduction Rules

Under present law, contributions by individuals of cash or property to private nonoperating foundations (and certain other charitable contributions) generally are deductible up to 20 percent of the donor's adjusted gross income (sec. 170(b)(1)(B). The bill raises this limitation to 30 percent for gifts of cash or ordinary-income property, but retains the 20-percent limitation for all gifts of capital-gain property other than to public charities or private operating foundations. Thus, gifts of capital-gain property to private nonoperating foundations (including gifts of certain appreciated stock which the bill makes deductible at fair market value) are subject to the 20-percent limitation.

The bill also provides that contributions to private nonoperating foundations of certain appreciated stock are deductible at the stock's fair market value (rather than at the present-law limitation of the donor's basis plus 60 percent of the appreciation). The increased deduction applies only to the extent that the cumulative total of donations by a donor (and family members) to private nonoperating foundations of stock in a particular corporation is less than 10 percent of the stock value of all outstanding stock of that corporation.

In addition, the bill extends to private nonoperating foundations the same rules on carryovers of charitable contributions exceeding the percentage limitations as apply under present law for contributions by individuals to public charities and private operating foundations (sec. 170(d)).

These changes made by the bill apply to contributions made after 1983. The increased deduction for contributions of certain appreciated stock will not apply to contributions made after 1993.

Excise Tax on Investment Income

The bill reduces from 2 to 1 percent the rate of the excise tax on net investment income of private foundations (sec. 4940), effective for post-1983 taxable years, but only if the foundation's payout for charitable purposes (computed as a 5-year average) is increased by an equivalent amount.

Also, the bill exempts from the section 4940 excise tax any private operating foundation that previously had been publicly supported for at least 10 years (or was in existence on January 1, 1983), that has a governing body broadly representative of the general public (with at least 75 percent consisting of persons unrelated to the foundation), and none of whose officers otherwise are dis-

qualified persons. This amendment applies to post-1983 taxable years.

Mandatory Payout Rules

The bill limits the amount of grant administrative expenses which may be counted as qualifying distributions for purposes of meeting the minimum payout requirement (sec. 4942), effective for post-1983 taxable years, to 15 percent of the amount of grants, gifts, and contributions made by the foundation, computed on the basis of a 5-year average. This limitation does not apply to administrative expenses incurred directly for the active conduct of an exempt activity.

Divestiture of Excess Business Holdings

The bill generally retains the divestiture rules of present law (sec. 4943) with respect to grandfathered excess business holdings which were held by private foundations on May 26, 1969, with certain modifications.

In the case of an unusually large gift or bequest after 1969 of diverse or complex excess business holdings, the bill provides Internal Revenue Service with discretionary authority to permit an additional 5-year period for divestiture on a showing by the foundation of good cause plus diligent efforts to dispose of the holdings within the 5-year period permitted under present law.

Expenditure Responsibility and Reliance Rules

The bill exempts from the expenditure responsibility requirements imposed on foundation grantors (sec. 4945) grants to those private operating foundations which the bill exempts from the 2-percent excise tax on net investment income (see above), effective for post-1983 taxable years.

The Treasury Department is to review its expenditure responsibility regulations for purposes of modifying requirements which are found to be unduly burdensome or unnecessary. Also, Treasury regulations are to be amended to extend to 5 years the advance ruling period during which qualifying new organizations are considered public charities, and to permit greater reliance on IRS classifications of new charitable organizations in the first 5 years of their existence.

Foundation Support for Voter Registration Drives

The bill retains all requirements of present law limiting private foundation support for voter registration drives (sec. 4945(f)) except the requirement that the voter registration drive must be conducted in five or more States; the latter requirement is repealed effective January 1, 1984. As under present law, the registration drive must be nonpartisan, and cannot be confined to one election period.

Definitions

The bill provides that the lineal descendants who are considered members of the family of a substantial contributor or other disqualified person, and thus themselves are considered to be disqualified persons (sec. 4946), are limited to the individual's children,

grandchildren, great-grandchildren, and their spouses, effective January 1, 1984.

In addition, the bill provides rules under which a person's status as a substantial contributor (sec. 507(d)) terminates in certain circumstances after 10 years with no connection to the foundation, effective for post-1983 taxable years. Also, the bill provides special retroactive relief from the excise tax on self-dealing in a particular case where continued status as disqualified person had triggered tax on a 1978 transaction, provided that the foundation received fair market value.

Abatement of First-Tier Penalty Taxes

The bill provides the Internal Revenue Service with discretionary authority to abate the automatic first-tier penalty taxes (other than the sec. 4941 tax on self-dealing) if the foundation establishes that the violation was due to reasonable cause and not to willful neglect, and corrects the violation. This provision applies to taxable events occurring after 1983.

Public Disclosure Requirements

The bill provides that beginning in 1984, private foundation notices which must be published annually in a newspaper (sec. 6104(d)) are to include the telephone number of the foundation's principal office. Also, the IRS is directed to enforce fully the present law rules concerning Form 990–PF information returns.

Games of Chance

The bill exempts from the unrelated business income tax (sec. 513) income derived by nonprofit organizations from conducting certain games of chance, provided that State or local law as of October 5, 1983, permits such games to be conducted only by nonprofit organizations. This provision applies retroactively to games of chance conducted after June 30, 1981.

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D. Simplification Provisions

(Tax Law Simplification and Improvement Act of 1983) (Title IV of the bill)

Estimated Income Tax for Individuals

The individual estimated income tax rules of present law are simplified and clarified by the bill. Generally, an individual will be required to make estimated tax payments (including withholding payments) equal to 80 percent of the current year's tax or 100 percent of the prior year's tax. Payments based on annualized income will be allowed. The Secretary may waive the penalty for failure to make payments by reason of a casualty, disaster, or other unusual circumstance where it would be inequitable to impose the penalty. Estimated tax payments of the alternative minimum tax will be required. The provision will be effective for taxable years beginning after 1983.

Domestic Relations

Transfers of property between spouses or incident to divorce

Under present law, gain is recognized on certain transfers of property in exchange for marital rights of a spouse or former spouse. The bill provides that property transfers between spouses or, if incident to divorce, between former spouses, will not result in the recognition of gain or loss. The transferee will hold the property at the transferor's basis. The provision will generally be effective for transfers after the date of enactment of the bill.

Alimony

Under present law, alimony is deductible by the payor and includible in the income of the payee. The bill revises the rules relating to the definition of alimony. Generally, only cash payments that will terminate on the death of the payee spouse will qualify as alimony. The present law requirement that the payment be based on a legal support obligation will be repealed. Payors will be required to furnish to the IRS the social security number of the payee spouse. A $50 penalty for failure to do so will be imposed. The provision will generally be effective for divorce or separation agreements or orders executed after 1983.

Dependency exemption for children of divorced parents, etc.

The bill provides that the $1,000 dependency exemption for a child of divorced or separated parents generally will be allocated to the custodial parent unless the custodial parent signs a written declaration that he or she will not claim the exemption for the year. Each parent may claim the medical expenses that he or she pays for the child, for purposes of computing the medical deduc-

tion. Income from certain sheltered workshops will not be taken into account in determining the dependency exemption. The provision will be effective for taxable years beginning after 1983.

Innocent spouse relieved of liability in certain cases

Under present law, a spouse may be relieved of liability where he or she signs a joint return and there was a substantial omission of income attributable to the other spouse. The bill extends these rules to situations involving claims of grossly erroneous deductions and credits and would replace the substantial omission of income test with a substantial understatement of tax test. Also, the bill overrides community property laws in certain situations where it is equitable to do so.

Estate tax treatment of certain property settlements

The bill conforms the estate tax treatment with respect to transfers of property to a former spouse under certain property settlements with the present law allowing a gift tax deduction for such transfers. The provision will apply to estates of decedents dying after date of enactment of the bill.

At-Risk Rules

The bill amends the at-risk limitation on the investment tax credit by providing that the base for the credit will be reduced by nonrecourse indebtedness related to the property; that is, a loan on which there is no personal liability. Qualified commercial financing, defined as financing from an unrelated party regularly engaged in commercial lending where no more than 80 percent of all financing for the property is nonrecourse, will be excluded from the limitation. In the case of an S corporation, recourse financing at the corporate level that is provided by a qualified commercial lender will be considered recourse financing at the shareholder level if the debt is related to property used by the corporation in an active trade or business with at least three full-time employees.

The bill will exempt, from both the loss limitation rules of section 465 and the investment tax credit at-risk rules, the active trade or business activities of a regular business corporation. To qualify, a trade or business must have three full-time employees one of whom is engaged full-time in managing the business, and its out-of-pocket expenses must exceed 15 percent of gross income. Special rules are provided for banks and life insurance companies in testing the 15-percent expense requirement.

The bill also requires that, in order for a lessee to be eligible to claim the full investment tax credit, the lessee must be at risk for future rental payments the present value of which equals at least 30 percent (18 percent in the case of 3-year property) of the fair market value of the property.

The investment tax credit provisions will generally apply to property placed in service in taxable years ending after the date of enactment of the bill; the loss rules will apply to taxable years beginning after 1983.

Estate Tax Revisions

Permanent rules for reforming governing instruments creating charitable remainder trusts and other charitable interests

Under the rules adopted by the Tax Reform Act of 1969, a charitable interest in a split-interest trust (that is, a trust which is part charitable and part noncharitable) must be in certain specified forms to be deductible for Federal income, gift, and estate tax purposes. Present law permits defective governing instruments of charitable split-interest trusts which were created pursuant to wills executed before January 1, 1979, to be amended to conform to the 1969 Act rules by December 31, 1981, if the amendment is completed or certain judicial proceedings begun by December 31, 1981.

The bill provides a permanent rule permitting reformation of governing instruments of charitable split-interest trusts which do not meet the requirements of the 1969 Act rules where the instrument evidences an intent to comply with the 1969 Act rules or reformation is begun within a reasonable period, and the actuarial values and durations of the charitable and noncharitable interests in the trust generally remain the same before and after the reformation. This provision will be effective with respect to reformations made after December 31, 1981.

Alternate valuation date election

Under present law, the value of property includible in the decedent's gross estate for Federal estate tax purposes generally is determined on the date of the decedent's death. However, the executor of the decedent's estate may elect to have the value of all property included in the gross estate determined as of the alternate valuation date (which generally is 6 months after the decedent's death). The election to use the alternate valuation date may be made only on a timely filed Federal estate tax return. Also, under present law, the Federal income tax basis of property acquired from a decedent generally is its value for Federal estate tax purposes.

The bill provides that the election to use the alternate valuation date may be made only where both the total value of all property in the gross estate and the Federal estate tax liability of the estate are reduced by making the election. The bill also allows the alternate valuation election to be made on the first estate tax return filed (whether filed timely or late).

This provision will be effective with respect to estates of decedents dying after the date of enactment of the bill.

Foreign Tax Provisions

Resident aliens

The bill provides standards for determining whether an alien individual is a resident of the United States for tax purposes. Under these standards, an individual will be treated as a resident when the sum of (1) the days present during the current year, (2) one-third of the days present during the preceding year, and (3) one-sixth of the days during the second preceding year equals or ex-

ceeds 183 days (an average of 122 days each year). Certain exceptions are provided. Also, a permanent resident for immigration purposes who enters the United States will be a U.S. resident. This provision generally will be effective for taxable years beginning after December 31, 1983. Transition rules are provided for individuals who were non-residents under present law for 1982 or 1983.

The bill prevents married nonresident aliens from using the community property laws of their home country to split income for U.S. tax purposes. This provision will be effective for taxable years beginning after December 31, 1983.

Foreign personal holding company attribution rules

The bill clarifies the family attribution rules for determining when a foreign corporation is a foreign personal holding company. It also prevents avoidance of U.S. tax by interposition of a foreign trust or another foreign entity between a foreign personal holding company and a U.S. taxpayer.

This provision generally will be effective for taxable years of foreign corporations beginning after December 31, 1983. The provision will apply to taxable years beginning after December 31, 1984, with respect to stock of a foreign corporation which has been owned continuously by the same entity since June 30, 1973.

Ordinary income treatment under section 1248

The bill clarifies the rules that tax the previously untaxed earnings and profits of a controlled foreign corporation at ordinary income rates when its U.S. owner disposes of his shares or liquidates the corporation. It will prevent later double taxation of those earnings and profits and double crediting of associated foreign taxes. It will also treat direct ownership of a controlled foreign corporation like indirect ownership for the purpose of these rules.

Generally, this provision will apply with respect to transactions to which subsection 1248 (a) or (f) applies occurring after the date of enactment of the bill. The double taxation limitation will apply to certain transactions occurring after October 9, 1975, if the foreign corporation so elects.

Coordination of subpart F with foreign personal holding company provisions

The bill coordinates the foreign personal holding company rules with the controlled foreign corporation rules. It provides that shareholders of a controlled foreign corporation (that is also a foreign personal holding company) are subject to the controlled foreign corporation rules to the extent that income taxable under those rules exceeds income taxable under the foreign personal holding company rules.

This provision will apply to taxable years of U.S. shareholders beginning after the date of enactment of the bill.

Stapled stock

The bill contains provisions regarding so-called stapled stock. It provides generally that if a foreign and a domestic corporation are stapled entities, the foreign corporation will be treated as domestic unless the stapled foreign entity elects to be treated as a subsidiary

of its U.S. stapled partner. Stapled entities would not be allowed to claim non-U.S. status by virtue of a treaty unless they were entitled to treaty benefits on June 30, 1983. In addition, if two domestic corporations are stapled entities, each will be treated as owning the other.

This provision generally will be effective on Januray 1, 1984. Entities stapled on June 30, 1983, will not be subject to the provision until January 1, 1987. Real estate investment trusts which were stapled on June 30, 1983, and U.S. corporations which were stapled on June 30, 1983, to Puerto Rican corporations would not be affected by this provision.

Miscellaneous Treasury Administrative Provisions

The bill makes a number of minor amendments relating to Treasury administrative provisions. The bill simplifies requirements of the Treasury Department to make reports to Congress, removes the $1 million limitation on the Treasury working capital fund, increases the authorization limit from $1 million to $10 million on the revolving fund for the redemption of real property, allows the Secretary of the Treasury to accept gifts and bequests for the Treasury Department, allows an extension of time for court review of a jeopardy assessment where the Government is not promptly served, removes the $1 million limitation on the Secretary of the Treasury's special authority to dispose of obligations, allows the Internal Revenue Service a minimum of 60 days to assess unpaid taxes shown on an amended return, provides the Government a lien on the assets of all financial institutions which issue an unpaid guaranteed draft for the payment of taxes, and allows the disclosure of windfall profit tax returns to State tax agencies.

The bill also repeals the occupational tax on manufacturers of stills and containers, allows drawback claims for distilled spirits excise taxes in certain cases, provides for disclosure of alcohol fuel producers to administrators of State alcohol laws, and repeals the stamp requirement for distilled spirits containers.

Tax Court Provisions

The bill allows certified public accountants and enrolled agents authorized to practice before the Internal Revenue Service to represent taxpayers in small claim cases before the Tax Court and increases the small claims case dollar limit from $5,000 to $10,000. The title of the Tax Court "commissioners" will be changed to "special trial judges." The bill provides that the Tax Court may prevent public disclosure of trade secrets or other confidential information. Finally, Tax Court judges will no longer be required to retire at age 70.

Simplification of Income Tax Credits

In general, the bill groups existing income tax credits into logical categories and provides uniform tax liability limitations and carryover rules. The business credits (that is, the investment tax credit, targeted jobs credit, alcohol fuels credit, and ESOP credit) will be combined into one credit and allowed up to 100 percent of the first $25,000 of tax liability and 85 percent of the remainder.

The research credit will continue to be allowable against 100 percent of tax liability. A 3-year carryback and 15-year carryforward period on a FIFO basis will be allowed for the business and research credit. This provision will apply to taxable years beginning after 1983.

Miscellaneous Tax Provisions

Rollover of certain partial distributions of qualified plans

Under the bill, distributions of less than the balance to the credit of an employee under a qualified pension, profit-sharing, or stock bonus plan or a tax-sheltered annuity contract can be rolled over, tax free, by the employee (or the surviving spouse of the employee) to an IRA. A rollover of a partial distribution will be permitted only if (1) the distribution equals at least 50 percent of the balance to the credit of the employee, (2) the distribution is not one of a series of periodic payments, and (3) the employee elects tax-free rollover treatment as prescribed by the Secretary of the Treasury. The provision will be effective for distributions made after December 31, 1983, in taxable years ending after that date.

Treatment of certain related party transactions

The bill amends the related party rules (sec. 267) so that a taxpayer would generally be placed on the cash method of accounting for purposes of deducting business expenses and interest owed to a related party cash basis taxpayer. These rules will be extended to amounts accrued by a partnership to a partner and vice versa. Also, the present law 2-percent de minimis ownership exception for Subchapter S shareholders is repealed.

In addition, the bill extends the loss disallowance and accrual provisions to transactions between corporations which are members of a controlled group of corporations, using a 50-percent control test.

These provisions generally will apply to taxable years beginning after 1983. However, the provision will not apply to (1) interest on indebtedness incurred on or before September 29, 1983, or incurred pursuant to a contract binding on that date and all times thereafter, and (2) other expenses made pursuant to a contract which was binding on September 29, 1983, and at all times thereafter.

Preferred stock eligible for small business corporation stock treatment

Under present law, a taxpayer is allowed to deduct, as an ordinary loss, up to $50,000 ($100,000 in the case of a joint return) of loss on the disposition of certain common stock of a domestic small business corporation. The bill, which applies to stock issued after the date of enactment, extends ordinary loss treatment to preferred stock of qualified small business corporations.

Medical expense deduction for certain lodging

Under present law, individuals who itemize deductions may deduct certain expenses paid for medical care to the extent the expenses exceed 5 percent of adjusted gross income. Amounts paid for transportation primarily for and essential to medical care are

treated as expenses paid for medical care. Amounts paid for lodging while away from home, however, do not qualify for the deduction.

Under the bill, certain expenses for lodging while away from home to receive outpatient care at a hospital will be treated as expenses paid for medical care, up to a limit of $50 per eligible person per day. The provisions of the bill will be effective for taxable years beginning after 1983.

Study of gross income tax

The bill provides for a study by the Treasury Department of a gross income tax.

Repeal of certain obsolete provisions (deadwood)

Three provisions (Code sections 405, 409, and 1251) are repealed as deadwood.

E. Tax Treatment of Fringe Benefits

(The Permanent Tax Treatment of Fringe Benefits Act of 1983) (Title V of the bill)

The Code defines gross income for income tax purposes as including "all income from whatever source derived" and specifies that it includes "compensation for services" (sec. 61). Similarly, the social security and unemployment insurance payroll taxes (FICA and FUTA) and income tax withholding generally apply to all remuneration for employment, including noncash remuneration.

Under present law, specific statutory exclusions are provided for income and employment tax purposes for certain types of employee benefits, such as health benefits. However, the Economic Recovery Tax Act of 1981 (Public Law 97-34) extended through December 31, 1983, a moratorium on the issuance of Treasury regulations relating to the income tax treatment of nonstatutory fringe benefits which was first enacted in 1978.

Under the bill, certain fringe benefits provided by an employer are excluded from the recipient employee's gross income for Federal income tax purposes and from the wage and benefit base for purposes of social security and other employment taxes. The excluded fringe benefits are those that qualify under one of the following five categories as defined in the bill: (1) a no-additional-cost service, (2) a qualified employee discount, (3) a working condition fringe, (4) a de minimis fringe, or (5) a qualified tuition reduction. Special rules are provided in the bill for the treatment of employee parking, subsidized eating facilities, and on-premises athletic facilities.

In the case of a no-additional-cost service, a qualified employee discount, employee parking, a subsidized eating facility, or a qualified tuition reduction, the exclusion applies with respect to benefits provided to officers, owners, or highly compensated employees only if the benefits are also made available to other employees on a nondiscriminatory basis.

Any fringe benefit that does not qualify for exclusion under the bill or under another specific statutory provision is includable in gross income, and subject to employment taxes, at the excess of its fair market value over any amount paid by the employee for the benefit.

The provisions of the bill generally take effect on January 1, 1984, except that the tuition reduction exclusion applies with respect to education furnished after June 30, 1984.

F. Technical Correction Provisions

(The Technical Corrections Act of 1983) (Title VI of the bill)

The Technical Corrections Act of 1983 contains technical, clerical, conforming, and clarifying amendments to provisions enacted by the Tax Equity and Fiscal Responsibility Act of 1982, the Subchapter S Revision Act of 1982, the Highway Revenue Act of 1982, the Social Security Amendments of 1983, and other recently enacted tax legislation.

The bill makes technical corrections to the following tax provisions of the Tax Equity and Fiscal Responsibility Act of 1982: (1) alternative minimum tax, (2) casualty loss deduction, (3) corporate minimum tax, (4) investment tax credit basis adjustment, (5) construction period interest and taxes, (6) leasing, (7) foreign taxation, (8) partial liquidations, (9) distributions of appreciated property in redemption of stock, (10) treatment of certain stock purchases, (11) treatment of certain holding companies, (12) completed contract method of accounting, (13) limitations on benefits and contributions under qualified plans, (14) loans to plan participants, (15) repeal of special qualification requirements, (16) repeal of special limitations on deduction for self-employed individuals and subchapter S corporations, (17) allowance of exclusion of death benefit for self-employed individuals, (18) special rules for top-heavy plans, (19) required distributions for qualified plans, (20) required distributions in case of individual retirement plans, (21) existing personal service corporations liquidating in 1983 or 1984, (22) nondiscriminatory coordination of defined contribution plans with OASDI, (23) profit-sharing plan contributions on behalf of disabled employees, (24) attorney's fees, (25) withholding on pensions, annuities, and certain other deferred income, (26) partnership audit, and (27) clerical amendments.

The bill makes technical corrections to the following provisions of the Subchapter S Revision Act of 1982: (1) corporate liquidations, (2) treatment of discharge of indebtedness, (3) treatment of inactive subsidiaries, (4) treatment of worthless debt, (5) investment tax credit recapture, (6) qualified subchapter S trusts, (7) accounting treatment where election terminates, (8) passive income rules for 1982, (9) attribution, (10) certain short taxable years, and (11) clerical amendments.

The bill makes technical corrections to the following miscellaneous provisions: (1) tax preference for low-income housing, (2) foreign currency contracts, (3) effective date of corporation acquisition provision, (4) coordination of certain amendments made by the Highway Revenue Act of 1982 and Public Law 97-473, and (5) principal campaign committees.

The bill makes technical corrections to the following provisions of the Highway Revenue Act of 1982: (1) application of retail truck

and trailer excise tax to vehicles including used parts, (2) application of gasoline excise tax to gasohol, (3) certain chain operators of retail gasoline stations treated as producers, (4) floor stocks refunds for tax-reduced tires, (5) collection of excise tax on noncommercial aviation gasoline, (6) floor stock refunds for retread tires, and (7) other technical and conforming changes.

The bill makes technical corrections to the following provisions of the Social Security Amendments of 1983 and related legislation: (1) social security coverage of Federal workers, (2) basis for calculation of alternate annual cost-of-living adjustments, (3) benefits of persons receiving pensions from noncovered employment, (4) gender-based distinction concerning entitlement of divorced husbands, (5) financing of noncontributory military wage credits, (6) effective date for elimination of gender-based distinction concerning divorced husbands, (7) effective date for treatment of nonqualified deferred compensation, (8) codification of the *Rowan* decision, (9) exclusion from coverage of foreign agricultural workers under the Agricultural Act of 1949, (10) gender-based distinction concerning the penalty for fraud, (11) peer review organizations, (12) medicare prospective payment, (13) normalizing credit of medicare taxes to the Hospital Insurance Trust Fund, (14) effective dates relating to certain medicare changes, (15) enrollment and premium penalty with respect to working aged provision, and (16) miscellaneous corrections.

G. Tax-Exempt Bond Provisions

(The Tax-Exempt Bond Limitation Act of 1983) (Title VII of the bill)

Mortgage Subsidy Bonds

Sunset date

Under present law, authority to issue tax-exempt bonds, the proceeds from which are used to finance owner-occupied housing (other than qualified veterans' mortgage bonds), expires after December 31, 1983. The bill postpones that sunset date for 5 years, to December 31, 1988.

Veterans' mortgage bonds

Under present law, authority to issue mortgage subsidy bonds, other than qualified veterans' mortgage bonds, is limited in each State to specific amounts. Under the bill, veterans' mortgage bonds are included within these volume limits by reducing the volume limits in each year, beginning in 1984, by the volume of veterans' mortgage bonds issued in the prior year. Veterans' mortgage bonds issued pursuant to a voter referendum approved prior to October 19, 1983, or pursuant to a referendum scheduled by October 18, 1983, for a referendum in 1983, are not subject to this provision. Authority to issue veternas' mortgage bonds will expire after December 31, 1988, along with other mortgage subsidy bond authority.

Reporting requirements

The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) required that issuers of tax-exempt bonds that are industrial developments bonds, student loan bonds or bonds issued for the benefit of tax-exempt organizations submit information reports to the Internal Revenue Service. The bill extends similar reporting requirements to all mortgage subsidy bonds.

Limited equity housing cooperatives

The bill permits blanket mortgages for certain limited equity cooperative housing projects to be financed with bonds issued under rules for multifamily housing projects. Bonds issued for such purposes are to be charged against volume caps for mortgage subsidy bonds. Owners of cooperative units so financed will not be permitted to deduct their share of mortgage interest payments and property taxes.

Mortgage Credit Certificates

The bill permits State and local governments to elect, for any year, to exchange all, or a part of, their qualified mortgage bond

authority for authority to issue qualified mortgage credit certificates (MCC's). The amount of authority which can be exchanged is restricted to 9 percent of the average volume of single-family mortgages in the prior 3 years. MCC's will entitle homeowners to nonrefundable income tax credits not exceeding 50 percent (but not less than 10 percent) of mortgage interest on qualifying principal residences. The credits are subject to the existing eligibility requirements for qualifed mortgage bonds. Credits not usable by the homeowner in the current year can be carried over.

States and localities can issue mortgage credits by electing to trade in all or a portion of their authority to issue mortgage subsidy bonds for authority to issue mortgage credits. The amount of traded-in bond authority reduces the maximum amount of mortgage subsidy bonds. The total amount of credits that could be issued would be 15 percent of the traded-in authority. For example, if a State converted $100 million of issuing mortgage bond authority, it could provide a 15 percent credit to homeowners with mortgage totaling $100 million. Alternatively, for example, it could provide 30 percent credits to homebuyers with mortgages totaling $50 million. For States and localities which issued less than their full authorized volume of mortgage subsidy bonds in 1983, the authority to issue MCC's is phased in over a 5-year period. The 1983 volume will be an annualized amount based on the actual issues in the first 9 months of 1983. MCC's are subject to the December 31, 1988, sunset for mortgage subsidy bonds.

MCC's can be distributed only following the announcement by the State or local government, at least 90 days before distribution, of a proposed plan of distribution.

Volume Caps for Private Purpose Bonds

The bill provides for State-by-State volume caps of $150 per capita for all private purpose bonds other than mortgage subsidy bonds and bonds issued to benefit 501(c)(3) organizations (e.g., the cap would include all IDB's and studnet loan bonds). The cap does not apply to bonds issued for traditional public purposes (e.g., schools, roads, and public improvement projects, and the financing of the public debt). The cap will be adjusted after 1986 to reflect the termination of small issue IDB's scheduled under current law.

The following provisions apply to the implementation of the volume caps:

1. The volume cap for each State is set by multiplying $150 by the population of the State (as most recently estimated by the Bureau of the Census).

2. For States whose 1983 volume of issuance exceeded $150 per capita, the cap for 1984 is increased by one-half of the difference between the 1983 volume and the otherwise applicable cap. The volume for 1983 is to be determined by annualizing the volume through September (to prevent a rush to market).

3. Refinancing of outstanding issues and rollover of short-term construction financing generally are not counted towards the cap.

4. Each State's cap is to be allocated according to the principles for allocation of mortgage subsidy bond authority. Thus, for each State, authority is to be allocated 50 percent to the State and 50 percent to local issuers on the basis of population, unless the State

legislature (or governor, on an interim basis) determines an alternate method of allocation. Local volume caps are to be allocated to the smallest units which exercise general governmental powers and which have authority under the State constitution or statutes to issue bonds for these purposes. A special allocation is to be made for constitutional home rule cities (as was the case for mortgage bonds).

5. State and local governments with authority to issue IDB's or student loan bonds can designate a portion of any one year's authority to be used in any one of the next 3 years for a specific project (other than a project to be financed with small issue IDB's) or for student loan bonds.

Restrictions on ACRS Deductions for IDB-Financed Property

Under present law, property financed with IDB's must generally be depreciated using the straight-line method over the ACRS recovery period. There are four exceptions to this rule: multifamily rental housing, sewage or solid waste disposal facilities, air pollution control facilities, and projects supported by UDAG grants. The bill repeals these exceptions in all cases except multifamily rental housing.

Other Provisions

Use of IDB's for purchase of land or existing facilities

Under present law, there is no general limitation on the use of IDB's to acquire land or existing facilities. The bill prohibits the use of IDB's to acquire land or existing facilities unless (1) the purchaser uses bond proceeds to finance a substantial rehabilitation of existing facilities, or (2) the purchaser uses bond proceeds to acquire farm or ranch land and (a) the purchaser is a first-time owner of farm or ranch land, (b) the purchaser operates the farm or ranch, and (c) where the purchase price of the land is not more than $250,000.

Limitation on small issue IDB's outstanding per principal user

Under present law, no more than $10 million of IDB's can be issued with respect to a single facility under the "small issue exception." This limitation does not prevent a single firm, for example, a national retail chain, from using small issue IDB's to finance facilities in many different locations. The bill allows small issue IDB's only to the extent that, for any one principal user, not more than $40 million of IDB's is outstanding after issuance. The bill provides a special rule relating to the allocation of a particular bond issue among principal users for purposes of the $40 million limitation.

Denial of tax-exemption for bonds issued with Federal guarantees

Under present law, some tax-exempt bonds are issued in conjunction with Federal Government guarantees. An example is a bond issue the proceeds of which are deposited on behalf of each purchaser in an institution whose deposits are insured by the Federal

Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC), and the proceeds are then loaned to the user by the depository institution. The bill denies tax exemption in such cases to assure that no bonds will be more attractive than Treasury securities or the general obligation bonds of State and local governments. This provision does not apply in the case of FHA and VA home mortgage guarantees or student loan guarantees.

Extension of code provisions to tax-exempt bonds issued under non-code provisions of law

Under present law, some bonds derive their tax-exempt status from provisions of law other than the Internal Revenue Code. Examples include bonds isued by the District of Columbia, the possessions and certain bonds issued under the Housing Act of 1937. The bill extends the tax-exempt bond provisions of the Code (for example, arbitrage restrictions and restrictions on industrial development bonds) to these non-Code bonds.

Small issue limitations applied to entire projects

Under present law, the capital expenditure limitations applicable to small issue IDB's have been interpreted as applying to individual principal users. Thus, under condominium arrangements, office buildings have been financed with IDB's where the entire building would violate the capital expenditure limitations but no single condominium unit exceeds those limitations. The bill amends the small issue capital expenditure limitations to prevent that result.

Principal user rules

Under present law, a principal user of a facility financed by IDB's cannot own the bonds used to finance the facility. Because the rules provide a de minimis exception in the definition of principal user, under some partnership arrangements, the intent of the provision has been avoided. Under these arrangements, for example, a 1 percent partner in a firm may be able to own tax-exempt bonds used to finance the firm's facilities and be able to deduct a share of the interest paid on the bonds. The bill amends the principal user provision to prevent this result.

Arbitrage rules

Under present law, the rules relating to mortgage subsidy bonds provide special arbitrage rules which restrict the spread between the effective interest rate on mortgage subsidy bonds and the interest rate paid by homeowners. The bill extends these rules to all IDB's and student loan bonds.

Prohibited uses of small issue IDB's

Under present law, the proceeds of small issue IDB's cannot be used for certain specific purposes such as a country club, tennis club, hot tub facility, or race track. The bill provides that IDB's cannot be used to finance liquor stores, sky boxes in sports facilities, private airplanes, and gambling establishments.

Mixed use projects

The bill permits IDB financing for the multifamily rental housing portion of a project that includes some commercial or other use.

UDAG supported projects

The bill increases, from $20 million to $25 million, the size of projects, supported with UDAG grants, that can be financed with small issue IDB's (up to the $10 million limit). Such grants must equal at least 5 percent of total capital expenditures for the project to qualify under this rule.

Airports

The bill modifies the public official approval rules of TEFRA in the case of airports located in more than one jurisdiction. In this case, the approval requirement can be met by the one jurisdiction which owns the airport.

Effective Dates and Transition Rules

The provisions of the bill generally apply to bonds issued after December 31, 1983. However, the bill does provide special effective dates for a number of provisions, as well as a number of transition rules.

The provision denying tax exemption for bonds guaranteed by the Federal Government is effective for bonds issued after April 14, 1983, in the case of bonds issued in connection with FDIC or FSLIC deposit insurance.

The restrictions on depreciation deductions for IDB-financed property apply generally to property placed in service after December 31, 1983. However, the restrictions will not apply to a facility placed in service after December 31, 1983, if the original use commences with the taxpayer and either (1) construction of the facility commenced before October 19, 1983, or (2) a binding contract existed on October 18, 1983, and at all times thereafter, which committed the purchaser to incur significant expenditures (the lesser of $15 million or 20 percent of the total cost of the facility) for construction or acquisition of the facility.

The restrictions will not apply to property placed in service after December 31, 1983, to the extent the property is financed with tax-exempt bonds issued before October 19, 1983.

The provisions with respect to federally guaranteed bonds and the application of the other limitations (except the State volume limits) will not apply to facilities if (1) the construction of the facility commenced before October 19, 1983, or (2) a binding contract existed on October 18, 1983, and at all times thereafter, which committed the purchaser to incur significant expenditures for construction or acquisition of the facility.

Any project which has received preliminary approval for IDB financing prior to October 19, 1983, will receive priority under volume caps for 1984, unless prohibited by State statute.

The bill also contains a number of other transition rules.

Obligations Issued by Certain Educational Organizations

The bill provides that the interest on obligations of the Pennsylvania State University is tax-exempt.

H. Miscellaneous Revenue Matters (Title VIII of the bill)

Capital Gain Treatment for Portion of Gain on Sale of Condominium Units Converted From Existing Structures

Under present law, the entire gain on the conversion of property into condominiums and the individual sale of those condominiums generally is treated as ordinary income to the seller. As a result, owners of property who wish to convert it into condominiums often sell the entire property to another person who converts the property and sells the individual condominium units. If the entire property is sold in one sale prior to conversion, the owner generally will receive capital gain treatment with respect to the gain on the sale of the property.

In general, the bill provides that a taxpayer can elect to treat a portion of the gain realized on the sale or exchange of the condominium units created in the conversion of qualified real property into condominium units as capital gain. The amount treated as capital gain would be the excess of the fair market value of the property over the property's adjusted basis at the time of the conversion. Any additional gain (or loss) on the disposition of the units would be treated as ordinary income (or loss) and would be an offset to the capital gain account. In addition, the bill amends the collapsible corporation provision to require that two-thirds of the taxable income from any condominium conversion of an existing structure must be realized to avoid collapsible status for that asset. These provisions would apply to conversions after the date of enactment of the bill in taxable years ending after such date.

No Gain Recognized From Net Gifts Made Before March 31, 1981

Present law taxes income "from whatever source derived," including the benefit resulting from the discharge of one's indebtedness by another party (Code sec. 61(a)(12)). Present law also imposes a gift tax on certain transfers for less than adequate consideration (sec. 2501). Liability for the gift tax is on the donor of the transferred property.

A donor may transfer property pursuant to an agreement with the donee that the donee will pay any gift tax arising from the transfer (that is, make a "net gift"). On June 15, 1982, the U.S. Supreme Court ruled in *Diedrich* v. *Commissioner,* that the discharge of a donor's liability for gift tax by the donee of a net gift gives rise to income to the donor to the extent that the gift taxes exceeded the donor's adjusted basis in the transferred property.

The bill would provide that no income would be recognized to donors who made net gifts before March 4, 1981 (the date on which an initial decision by the Court of Appeals held that the donor in the *Diedrich* case recognized income).

Disaster Loss Deduction Where Taxpayer Ordered to Demolish or Relocate Residence in Disaster Area Because of Disaster

Present law allows a deduction for nonbusiness casualty losses to the extent such losses exceed 10 percent of adjusted gross income. In general, a deduction is allowed only when the casualty (for example, storm, flood or earthquake) causes actual physical damage to the taxpayer's property.

The bill provides that certain taxpayers whose residences are located in a federally declared disaster area, and who are ordered by a State or local government to demolish or relocate their residences, may deduct any loss attributable to the disaster as a casualty loss. The provision applies to taxpayers whose residences have been rendered unsafe for use as a residence as a proximate result of the disaster.

Foreign Investment Companies

Offshore commodity funds

Taxpayers contend, under present law, that a foreign corporation that is widely held by U.S. persons may establish a subsidiary to invest in U.S. commodities markets without any of the parties incurring U.S. tax. They also contend that when the U.S. shareholders eventually dispose of their shares in the foreign corporation they will be subject to tax at only the capital gains rate.

The bill, in certain cases, applies the accumulated earnings tax to earnings from U.S. investments, even after those earnings pass through corporate solution as dividends or interest. The bill will apply to distributions received by a U.S.-owned foreign corporation on or after May 23, 1983. In the case of a foreign corporation that was a U.S.-owned foreign corporation on May 23, 1983, however, the provisions will first apply in the first taxable year of the foreign corporation that begins after December 31, 1984.

The bill also generally treats gains of U.S. shareholders from such investments as ordinary income. The bill will generally apply to sales and exchanges (and distributions) after September 29, 1983. In the case of shares on September 29, 1983, and held continuously thereafter by one taxpayer until sale, exchange, or distribution, however, the bill will apply to sales and exchanges (and distributions) made 1 year after date of enactment.

Corporations formed to straddle

Taxpayers may attempt to avoid the tax straddle rules by forming corporations, typically foreign corporations, to take positions to offset their own. The bill treats such stock ownership as a position for the purposes of the straddle rules. This treatment would prevent a taxpayer from recognizing losses when the taxpayer uses a corporation for straddling purposes. The bill applies to positions established after May 23, 1983.

Application of Cash or Deferred Arrangement Rules to Pre-ERISA Money Purchase Pension Plan

The Employee Retirement Income Security Act of 1974 (ERISA) provided that amounts deferred by an employee pursuant to a cash or deferred arrangement or a salary reduction arrangement under

a tax-qualified profit sharing, stock bonus, or money purchase pension plan are excluded from the employee's income if (1) the plan was in existence on June 27, 1974, and (2) the applicable requirements of prior law were satisfied. This tax treatment for then existing plans was preserved, pending study by the Congress of the appropriate treatment for cash or deferred and salary reduction arrangements.

Under the Revenue Act of 1978, amounts deferred by an employee after 1979 pursuant to a cash or deferred arrangement under a tax-qualified profit sharing or stock bonus plan are excluded from the employee's income only if certain requirements added by the Act are met. No new rules were provided by the 1978 Act for salary reduction arrangements under money purchase pension plans.

Under the bill, amounts deferred by an employee pursuant to a salary reduction arrangement under a money purchase pension plan are excluded from the employee's income if the plan was in existence on June 27, 1974, and contributions by employees and the employer do not exceed the levels permitted under the plan's contribution formula on that date. In addition, the plan must satisfy rules added by the 1978 Revenue Act with respect to employee participation and prohibited discrimination in favor of officers, shareholders, or highly compensated employees.

The bill will apply for plan years beginning after December 31, 1983. The rules in effect prior to ERISA will apply for plan years beginning after December 31, 1979, and before January 1, 1984.

I. Social Security Disability Benefit Reform

(The Social Security Disability Benefits Reform Act of 1983) (Title IX of the bill)

Standards for Evaluation of Disability

The bill requires the continuation of benefits for those individuals whose conditions have not medically improved to the point of ability to perform substantial gainful activity [SGA] with the following exceptions:

(a) If new evidence shows the beneficiary has benefited from advances in medical therapy or technology, or from vocational therapy to the point of being able to perform SGA;

(b) If new evidence, including new diagnostic or evaluation techniques not available or used at the original determination, shows the impairment to be less severe than originally thought;

(c) If the person is currently working, or if the original determination either was clearly erroneous or was fraudulently obtained.

The bill provides for a study to be conducted by the Secretary of Health and Human Services in conjunction with the National Academy of Sciences on the use of subjective evidence of pain in determinations of disability. The bill also provides that determinations of disability must take into account the combined effect of all of the applicant's impairments, even if none of the impairments alone would qualify the person for benefits.

Disability Determination Process

The bill provides for a number of major changes in the disability administrative process: first, there will be a moratorium on reviews of beneficiaries with mental impairments until the Secretary and the Advisory Council on Disability (established by the bill) revise the mental impairment criteria, to be published no later than 9 months after enactment; second, the Secretary must implement, no later than January 1, 1985, face-to-face evidentiary interviews at the State agency for cases where benefits are to be terminated because of medical recovery (the reconsideration level of review would be abolished for these cases), and must in addition implement pilot projects for such interviews for all new disability applicants in at least five States, beginning no later than January 1, 1984; third, the bill provides on a permanent basis that benefit payments will be continued while the beneficiary is appealing termination of benefits through the administrative law judge hearing level.

The bill also requires that a psychiatrist or psychologist employed by the State agency must review any case where benefits are to be terminated for a person with a mental impairment, and also requires that regulations be promulgated concerning standards for consultative medical examinations.

Other Miscellaneous Provisions

The bill requires the Social Security Administration to promulgate policy according to the notice and comment requirements of section 553 of the Administrative Procedure Act; the exception in that act allowing informal policy statements and interpretive rulings to be issued without formal notice and comment will continue to apply to SSA. The bill also requires SSA either to apply the decisions of Federal circuit courts of appeal that have precedential value to all determinations within the jurisdiction of the circuit court, or to appeal the decision to the Supreme Court.

The bill authorizes reimbursement of vocational rehabilitation agencies for services rendered to certain disability beneficiaries even where the beneficiary medically recovered, or failed to cooperate. In addition, the Secretary is required to establish higher grade attorney positions for social security staff attorneys. Finally, the bill creates an Advisory Council on Medical Aspects of Disability composed of independent medical and vocational experts to provide advice and recommendations to the Secretary on disability standards, policies, and procedures.

Supplemental Security Income (SSI) Disability Changes

The bill makes the same changes in the SSI disability program as the bill makes in the social security disability insurance program. In addition, the bill extends for 2½ years, through June 30, 1986, the temporary authority in section 1619 of the Social Security Act that provides for the continuation of SSI benefits and/or medicaid for disabled receipients who are able to work in spite of their impairments. As related to the SSI disability program, the Advisory Council on Disability also is required to consider alternative approaches to the use of work evaluation in determining eligibility for SSI disability benefits and to reexamine the definition of a successful rehabilitation of an SSI recipient to include the ability of the severely disabled to work in a sheltered environment and live independently.

J. Medicare Amendments

(The Medicare Budget Reconciliation Act of 1983) (Title X of the bill)

Reimbursement of Cardiac Pacemaker Services

The bill requires the Secretary of Health and Human Services (the Secretary) to issue guidelines on the indications for, and frequency of, transtelephonic monitoring of pacemakers. If guidelines are not established by February 1, 1984, the bill will establish a frequency schedule for certain types of pacemakers, with exceptions for medically documented cases.

The Secretary is required to study reimbursement rates for physicians' services with respect to pacemakers, taking into consideration changes in surgical procedures that have taken place over the years.

The Food and Drug Administration (FDA) is to establish a registry of all implemented pacemakers.

Clinical Laboratory Services

The bill establishes a fee schedule for all clinical laboratory services provided to medicare beneficiaries except for hospital inpatients. The schedule may initially be established on a carrier or regional basis. A national fee schedule is required to be established within three years.

The initial fee schedule is to be set at a level no higher than 60 percent of prevailing charges and is to be updated annually by the same percentage increases as the Consumer Price Index. The clinical laboratory is required to bill the program directly and accept medicare assignment. For these services the laboratory is to be reimbursed 100 percent of the fee schedule amount (or, if lower, the billed charge), with the deductible and coinsurance waived.

When the physician directly provides, or supervises the provision of, clinical laboratory services, and where he agrees to accept medicare assignment, the physician is to be reimbursed at 100 percent of the fee schedule amount (or, if lower, the billed charge) with deductible and coinsurance waived. Physicians not accepting assignment will continue to be reimbursed at 80 percent of the fee schedule amount or (if lower, 80 percent of the billed charge) with the usual deductible and coinsurance.

Certain Foot Care Services

Medicare will cover debridements of mycotic toenails no more frequently than every 60 days, unless medical necessity is documented.

Coverage of Hepatitis B Vaccine

Medicare will cover hepatitis B vaccine furnished to medicare patients in hospitals and renal dialysis facilities. The part B deductible and coinsurance will be waived.

Continue Existing Part B Premium Calculations

The bill makes permanent the existing temporary provision which fixes the proportion of the part B medicare costs financed by beneficiary premiums at 25 percent of program costs, effective January 1, 1986.

Date for Report on Physician Payment

The bill specifies the date on which the Secretary of Health and Human Services is requried by present law to report to Congress recommendations on the advisability and feasibility of making payments for physician services furnished to hospital inpatients based on a diagnosis-related group (DRG) system and legislative recommendations thereon. The report is due July 1, 1985.

Delay of Single-Rate for Skilled Nursing Facilities

Under the bill, the single-rate for hospital-based and freestanding skilled nursing facilities is delayed from October 1, 1983 until April 1, 1984.

Physical Therapy Plan of Treatment

Either a physical therapist or a physician will be permitted to establish a plan of treatment for physical therapy services. The physician wil still be required to review the plan periodically, as under existing law.

Definition of Bona Fide Emergency Services

Existing law provides for reduced payment for physicians' services in hospital outpatient departments except for "bona fide emergency services." The bill establishes the following statutory definition of emergency services: "Services provided in hospital emergency rooms after the onset of a medical condition manifesting itself by symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected by a prudent layperson possessing an average knowledge of health and medicine to result in (a) placing the patient's health in jeopardy; (b) serious impariment to bodily functions; (c) serious dysfunction of any bodily organ or part; or (d) development or continuance of severe pain."

Area Wage Index

The bill directs the Secretary to establish criteria under which a hospital could demonstrate, for purposes of medicare prospective payment, that the area wage index inaccurately reflects the labor market conditions it actually faces; adjustments in payment could be made where the Secretary deems appropriate. The Secretary is also directed to consult with the Department of Labor and Bureau of Labor Statistics to develop an improved area wage index.

Medicare Definition of "Physician" for Certain Purposes

Under the bill, a podiatrist (acting within the scope of his practice) will be considered a physician for purposes of coverage of outpatient physical therapy, which requires that the patient be "under the care of a physician." A podiatrist or a dentist (acting within the scope of his practice) will be considered a physician for purposes of coverage of outpatient ambulatory surgery in a surgeon's office.

HMO Open Enrollment Provision

The bill directs the Secretary to designate one 30-day period each year in which all of the medicare participating HMOs in a geographic area must have an open enrollment period.

Provider Representation on Peer Review Organizations (PRO)

One person who is a governing body member, officer or managing employee of a health care facility will be permitted to be a member of the governing board of a PRO with less than 15 members; in the case of a PRO governing board of more than 15, two such members will be permitted.

Mobile Intensive Care Units

Certain services of mobile intensive care units can be covered under medicare part A under specified circumstances in States with Statewide prospective payment systems.

Nurse Anesthetists

For a temporary period, hospitals employing certified registered nurse anesthetists (CRNA's) will be reimbursed on a reasonable cost basis, as determined by the Secretary, for services of CRNA's. The bill requires the Secretary to report with recommendations on payments for CRNA's under the prospective payment system.

Freeze on Physician Prevailing Charges; Mandatory Assignment

The Committee agreed to the following Committee amendment to the Committee bill:

Prevailing charges for physicians' services provided to hospital inpatients would be frozen at the June 30, 1983, level, effective January 1, 1984, through June 30, 1984.

Physicians would be required to accept medicare assignment for all services provided to medicare hospital inpatients until six months after the Congress receives the Secretary's report on including physician payments under the DRG prospective payment system, which under the bill would be due by July 1, 1985.

To participate in medicare, each hospital would be required to obtain from each doctor on its medical staff an agreement to accept assignment for any medicare inpatient services rendered in the hospital.

Miscellaneous Medicare Provisions

The bill also contains the following provisions making a number of miscellaneous changes:

1. Changing from the end of the calendar year to 30 days after termination of a home health agency agreement, the ending of coverage for services provided under a plan established prior to the termination date of the participation agreement.

2. Repealing the special tuberculosis treatment requirements under medicare.

3. Establishing the right of medicare to recover directly from certain third parties, such as workers' compensation, auto and liability insurance.

4. Permitting part B payments to be made to a health benefits plan whose payment is accepted by the physician or other supplier as payment in full.

5. Eliminating the Health Insurance Benefits Advisory Council.

6. Extending to surveys by the American Osteopathic Association and other national accrediting organizations the same disclosure protections given JCAH surveys.

7. Providing flexible sanctions for noncompliance with requirements for end stage renal dialysis facilities.

8. Increasing from $10,000 to $50,000 the minimum value of the agreement between a medicare provider adn a subcotractor for purposes of requiring access to subcontractor records.

9. Authorizing the Secretary to rely on certain accrediting organizations in determining whether rural health clinics, laboratories, clinics, rehabilitation agencies, including outpatient rehabilitation facilities, and public health agencies meet medicare requirements (and clarify the Secretary's authority with respect to ambulatory surgical centers).

10. Providing for the Presidential appointment of the Administrator of the Health Care Financing Administration with the advice and consent of the Senate. The position and pay of the Administrator will be increased to Level IV of the Executive Schedule.

11. Authorizing the Secretary to exclude from medicare participation any entity in which ownership or controlling interest is held by a person convicted of a program-related criminal offense, or in which an officer, director, agent or managing employee was convicted of such a criminal offense.

12. Permitting a physician who has a financial interest in a home health agency that is a sole community provider to carry out the certification and plan-of-care functions for patients who receive services from the agency, and to delete from the list of disqualified physicians uncompensated officers or directors of incorporated home health agencies.

K. Amendments to Trade Adjustment Assistance Programs (Title XI of the bill)

The bill contains three amendments to the trade adjustment assistance programs for workers and firms under the Trade Act of 1974 as amended. The amendments would apply from date of enactment of the bill.

Limitations on Trade Readjustment Allowances

Under present law a worker may receive up to 26 weeks of additional trade readjustment allowances (TRA) in order to complete training. However, a worker can collect the extra 26 weeks of benefits only during the 26-week period immediately following exhaustion of his entitlement to basic TRA (i.e., the 52-week period after exhausting regular unemployment compensation). As a result, workers are often denied benefits due to delays in certification or training approval.

The bill amends section 233(a)(3) of the Trade Act to enable workers to collect the additional weeks of TRA beginning with the first week the worker enters training if that training has not been approved until after the last week of entitlement to basic TRA benefits.

Job Search and Relocation Allowances

The bill amends section 237 of the Trade Act to increase the maximum job search allowance for workers from $600 to $800 and amends section 238 of that Act to increase the maximum lump sum allowance for worker relocation from $600 to $800.

Assistance to Industry

The bill amends section 265 of the Trade Act by extending eligibility for industry-wide technical assistance under the firm program to industries in which a substantial number of workers have been certified eligible for trade adjustment assistance. Currently, an industry can qualify for such assistance only if a substantial number of firms in that industry have been certified.

The bill also increases the maximum annual amount of technical assistance available per industry from $2 million to $10 million in order to provide technical "seed" money for basic industries.

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